IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12/08/2004

CORAM

THE HONOURABLE MR. JUSTICE P.K. MISRA
AND
THE HONOURABLE MRS. JUSTICE R. BANUMATHI

WRIT PETITION NO.10165 OF 2003

M. Baladandapani,
S/o. late Thiru K.S. Marimuthu .. Petitioner

-Vs-

1. The Secretary,
Ministry of Urban Affairs and
Poverty Alleviation, 'C' Wing,
Nirman Bhavan,
New Delhi 110 011.

2. The Director General (Works),
Government of India,
Directorate General of Works,
Central Public Works Department,
Nirman Bhavan, 'A' Wing,
New Delhi 110 011.

3. The Chairman,
Union Public Service Commission,
Dholpur House, Shahjahan Road,
New Delhi.

4. Shri N. Veerabadhu,
Chief Engineer (Retd) CPWD

5. Shri D. Laxamana Rao,
Superintending Engineer (P & A)

6. Shri Trilok Chandra,
Director of Works (NR)

7. Shri K.V.L.N. Rao,
Superintending Engineer (P), NDZ II

8. Shri R.D. Aggarwal
Superintending Engineer (Vig), CPWD

9. Shri C.S. Prasad
Superintending Engineer (P&A)

10. Shri O.N. Mathur
Superintending Engineer

11. Shri A.K. Sinha - I
Superintending Engineer

12. Shri V.K. Sharma - I,
Superintending Engineer

13. Shri. R.M. Matai
Superintending Engineer

14. Dr.N. Ravi
Superintending Engineer (CDO)

15. Shri G.C. Khatter
Superintending Engineer

16. Shri K.T. Sambandam
Superintending Engineer

17. Shri Bhartendu Bhushan
Superintending Engineer

18. Shri Lalit Mohan
Superintending Engineer (P&A)(NZ)-III

19. Shri D. Hore,
Superintending Engineer(Coord) ER

20. Shri M.K. Goel
Superintending Engineer-I (Vig)

21. Shri Suresh Kumare
Superintending Engineer

22. Shri J.P. Gupta,
Superintending Engineer (C&M)

23. Shri P.C. Arora,
Superintending Engineer

24. Shri K. Balakrishnan
Superintending Engineer(P) SZ-I

25. Shri Virendra Sharma
Superintending Engineer(C)

26. Shri Pritosh Choudhuri
Superintending Engineer(P)

27. Shri A.L. Garg
Project Manager (DS & CM)

28. Shri Ram singh
Superintending Engineer

29. Shri S. Chinnaswamy
Director of Works (SR)

30. Shri K.L. Bhulania
Director (Personnel)

31. Shri S.K. Mittal
Superintending Engineer

32. Shri Abraham Jospeh
Superintending Engineer

33. Shri A.K. Trivedi
Chief Engineer (NSG)

34. Shri Pradip K. Gupta
Superintending Engineer(Coord)(Civil)

35. Shri V. Subramaniam
Superintending Engineer(P)

36. Shri J.C. Wasan
Superintending Engineer

37. Shri Rakesh Mishra
Superintending Engineer(P&AS)(BFZ)

38. Shri V.K. Gupta
Superintending Engineer(E&F)&(P&A)

39. Shri A.K. Bajaj
Chief Engineer (G)

40. Shri R. Sircar
Superintending Engineer

41. R.B. Singh
Superintending Engineer

42. Shri S. Baliga
Chief Engineer (ESIC)

43. Shri Pipin Chand,
Superintending Engineer

44. Shri N.K. Sinha
Superintending Engineer(Admn)

45. Shri S.C. Padhi,
Superintending Engineer

46. Shri Rajendra Prasad
Superintending Engineer(P)

47. Shri A.K. Sinha
Superintending Engineer

48. Shri Lekhraj Singh,
Superintending Engineer (TLC)

49. The Central Administrative Tribunal,
Madras Bench,
High Court Complex,
Chennai 600 014.
Rep. by its Registrar .. Respondents

Petition filed under Article 226 of the Constitution of India for the issuance of Writ of Certiorarified Mandamus as stated therein.

For Petitioner : Mr.R. Thyagarajan
Senior Counsel for
Mr. Isaac Mohanlal

For Respondents 1 &2: Mr.N. Sathyaseelan, SCGSC

Respondent-3 : Mr.M.T. Arunan, ACGSC

:J U D G M E N T

P.K. MISRA, J

The present writ petition has been filed against the order of the Central Administrative Tribunal, Chennai dated 11.11.2002, dismissing O.A.No.638 of 2002 filed by the petitioner.

2. The facts giving rise to the present writ petition are as follows :-

The petitioner is presently working as Superintending Engineer under the Central Public Works Department. He had joined service as an Assistant Executive Engineer (Civil) in the year 1972 and was appointed as Executive

Engineer in December, 1978. Subsequently he was promoted as Superintending Engineer on ad-hoc basis in August, 1989. In October, 1994, the Departmental Promotion Committee (DPC) considered the question of regularisation of ad-hoc promotion of various Superintending Engineers including the petitioner. According to the petitioner, he should have been regularised as Superintending Engineer with effect from 31.12.1987 and placed at Sl.No.71 of the seniority list, but was regularised with effect from 31.3.1991 and placed at Sl.No.116 . At that stage, the petitioner had filed O.A.No.869 of 1995 before the Central Administrative Tribunal, Hyderabad against the illegal supersession of juniors of 1973 and 1974 batches and nonregularisation of his service as Superintending Engineer with effect from 31.12.19 87. The said application was rejected by the Tribunal by judgment dated 5.3.1997. From the aforesaid judgment, the petitioner came to know that for the year 1982-83, an adverse entry to the effect "below average" had been made. Subsequently, the petitioner filed S.L.P.(C) No.19192 of 1997, wherein the Supreme Court while condoning the delay in filing of the Special Leave Petition, rejected the SLP in limine. The subsequent Review Application filed by the petitioner was also rejected. Thereafter, the seniority list of the Superintending Engineers was issued in September, 1998 and the petitioner's seniority was shown at Sl.No.91, whereas he should have been shown at Sl.No.46, according to him. Representations made by the petitioner were rejected.
The petitioner thereafter filed O.A.No.638 of 2002 before the Central Administrative Tribunal, Chennai with a prayer to set aside the Annual Confidential Reports for the year 1982-83 and also to set aside the order of the Director General (Works) dated 14.10.1987 and direct him to upgrade the Annual Confidential Report from 1.4.1984 to 31.3.1 985.

3. Before the Tribunal it was contended by the petitioner that during the DPC held in October, 1994, the authority had considered the confidential entries for seven years, namely from 1980-81 to 1986-87 and they had relied upon the uncommunicated entries for the year 1982-8 3 and also the entry relating to 1984-85, which had been subsequently expunged, but overall grading had not been altered. It was the further contended that for the two years prior to 1982-83, the reports were very good; but for the uncommunicated adverse entries for the year 1982-83 and incomplete for the year 1984-85, the petitioner would have been found suitable for the promotion with effect from 31.12.1987.

4. A counter affidavit was filed before the Tribunal by the Department, wherein it was indicated that DPC had considered the records of all the candidates in the year 1994 and had effected promotion and such orders having been challenged in earlier O.A.No.869 of 1995 before the Central Administrative Tribunal unsuccessfully by the petitioner, he cannot seek to re-open the matter, particularly, when the Special Leave Petition filed by the petitioner had been rejected. Apart from raising the question of res judicata, the respondents had also raised the question of laches by contending that the petitioner was seeking to rectify the entries in the Annual Confidential Reports for the year 1982-83 and 1984-85, after a long lapse of time. The aforesaid contentions of the respondents were accepted by the Tribunal, which has rejected the Original Application mainly by applying the principle of res judicata and laches.

5. The contention raised in the subsequent petition before the Tribunal and reiterated in the present writ petition is to the effect that the adverse entry for the year 1982-83, which had been made with mala fide intention by the respondent NO.4, had not been communicated to him. The adverse entry for the period from 1.4.1984 to 31.3.1985, even though expunged subsequently, the authorities had not given any report for the said period on wrong assumption.

6. Learned senior counsel appearing for the petitioner has contended that the questions relating to defect in the adverse entries for the years 1982-83 and 1984-85 had not been directly raised in the previous Original Application No.869 of 1995 filed before the Central Administrative Tribunal, Hyderabad and it cannot be said that the said issue had been heard and finally decided so as to attract the principle of res judicata. It is further contended that since the petitioner had came to know about the adverse entries after the judgment of the Central Administrative Tribunal pronounced in the year 1997, and the adverse entry for the year 1982-83 had not been communicated, the question of laches did not arise.

7. We have heard the learned counsels appearing for the parties at length and carefully perused the various materials on record. After giving our anxious consideration to the questions raised, we are unable to accept the submission made on behalf of the petitioner.

8. The Central Administrative Tribunal, Hyderabad, while rejecting O.A.No.869 of 1995, was primarily concerned with the question regarding the promotion of the petitioner with effect from 31.3.1991. The main contention of the petitioner was that he should have been promoted with effect from 31.12.1987. While considering the aforesaid aspect, it is obvious that the respondents in the said Original Application had brought to the notice of the Tribunal regarding various entries in the Annual Confidential Reports. There is copious reference to various Annual Confidential Reports, including for the year 1982-83 and 1984-85. It is evident that the propriety of the adverse entry was the matter under consideration by the Tribunal. Keeping in view of the contentions raised before the Tribunal, it is clear that the petitioner was very much aware about the adverse entries made for the year 1982-83 and 1984-85.

9. As a matter of fact, in his Original Application filed before the Central Administrative Tribunal, Hyderabad, the petitioner has made specific averment to the effect :-

". . . However, his ACRs relating to 4 years from 1981-82 to 1984-85 were deliberately spoilt by a castiest and arbitrarily acting reporting officer, Sri N. Veerabhadhu, due to which his promotional chances were jeopardized. Yet he was given adhoc promotion in the normal course without any way disturbing his seniority during August, 1989 as Superintending Engineer (Civil). However, when it came to regularisation of the promotion, the DPC disturbed his seniority as a result of which he got superceded by juniors of 1973 and 197 4 batches and his regularisation was done with effect from 31-3-91 whereas it should have been done with effect from 31-12-1987 in

the right course of things. In doing so, the DPC only mechanically relied on the motivated and unjust ACRs of the above-mentioned 4 years also but did not look into the self-appraisal reports of the applicant and the various recommendations he received for his good service record."

It was further stated :

" . . . He believes that he received 'Very Good' grading from the Reporting Officer, for the period of 1980-81 and likewise was given the benchmarks 'Good' and 'Very Good' for the years 1985-86 and 1986-8 7 by the concerned reporting officers of the period. However, great and irreperable damage was done to his career by the caste-biased and arbitrary attitude of the reporting officer, Sri N. Veerabadhu, S.E., who wrote the A.C.Rs of the applicant for the four years from 198 1-82 to 1984-85."

10. From the aforesaid averments, it is apparent that even at the time of filing of the earlier Original Application No.869 of 1995, the petitioner was very much aware of the fact that adverse entries had been made. Therefore, while contending that he should be given promotion from an earlier date, it was very much open to the petitioner to raise the question now raised before the present Tribunal to the effect that non-communicated adverse entry had been relied upon by the DPC while considering the question of promotion. In other words, it must be taken that the petitioner ought to have raised the question now raised even at that stage when the validity of the adverse entries had been questioned by him albeit on slightly different grounds.

11. Moreover, in the Special Leave Petition filed by the petitioner, a specific ground had been raised to the effect :-

" Whether the uncommunicated adverse remarks ought not to have been relied by the DPC to disentitle the petitioner from promotion? It is submitted that even though the Hon'ble Tribunal considered the said issue of the non-communicated adverse remarks the Hon'ble Tribunal did not follow the logical conclusion of the settled law by this Hon' ble Court in the case of U.P.Jal Nigam & Ors. v. P.C. Jain, 1996(2) SCC 363".

12. Indeed, the averments and specific grounds now raised in the proceedings before the Tribunal and before this Court are very much similar grounds and were raised before the Supreme Court in the S.L.P. The Supreme Court had dismissed the S.L.P at the admission stage.

13. Having regard to all these aspects, the conclusion of the Tribunal under the impugned judgment to the effect that the contentions raised by the petitioner are hit by the principles of res judicata, cannot be said to be suffering from any error or law apparent on the face of record, warranting interference.

14. A perusal of the judgment passed by the Tribunal on earlier occasion, makes it very clear that the main questions raised in the said proceedings are similar to the questions now raised and the matter had

been decided against the petitioner and ultimately, the SLP filed by the petitioner was dismissed at the stage of admission. Therefore, it is not possible to re-open the questions which had attained finality at that stage and come to a different conclusion.

15. The matter can be viewed from another angle. The question of non-promotion of the petitioner on regular basis from 31.12.1987, was challenged in the earlier case. The petitioner now contends that since non-consideration was vitiated by the fact that uncommunicated adverse entries in the Annual Confidential Reports had been considered, and therefore, the matter requires reconsideration. To countenance such a plea would be like permitting the petitioner to raise the question which did not find favour with the Tribunal and the Supreme Court at that stage. Undertaking such a course at this stage, would amount to sitting in appeal not only over the order passed by the Tribunal at that stage but also over the order passed by the Supreme Court, when the SLP filed by the petitioner was rejected and even the subsequent Review Application was also rejected. What could not be achieved directly by the petitioner at that stage is sought to be achieved indirectly by the petitioner at the present stage.

16. So far as the adverse entry relating to 1984-85 is concerned, it is very much apparent that specific questions had been raised before the Tribunal on earlier occasion and had been answered against the petitioner. Moreover, the representations made by the petitioner had been rejected long back. Such questions finalised long back at that stage, cannot be agitated at this stage.

17. Learned Senior Counsel appearing for the petitioner has relied upon the decision of the Supreme Court reported in 2000 (6) SCC 359 (KUNHAYAMMED AND OTHERS v. STATE OF KERALA AND ANOTHER) and 2004 (1) SCC 497 (U.P. JAL NIGAM AND OTHERS v. PRABHAT CHANDRA JAIN AND OTHERS) in support of the contention that dismissal of Special Leave Petition in limine at the admission stage, does not operate as res judicata.

18. These decisions had been cited in support of his contention that even though a question of uncommunicated adverse entry had been raised in the S.L.P., the order of the Supreme Court dismissing the S.L.P in limine, would not amount to res judicata on this aspect and the Tribunal on the subsequent occasion, was free to decide the subsequent question.

19. On a careful consideration of the decisions of the Supreme Court in the aforesaid cases, we are of the view that the said decisions do not have any applicability to the questions now raised. Even assuming that dismissal of the Special Leave Petition would not operate as res judicata, the fact remains that the question of adverse entry for the year 1982-83 and 1984-85, had been raised before the Tribunal and the Original Application filed by the petitioner had been rejected and such order has assumed finality and those questions are not available to be raised in an

indirect manner at a subsequent stage.

20. For the aforesaid reasons, we do not find any merit in the present writ petition, which is dismissed. There would be no order as to costs.

Index : Yes
Internet: Yes

dpk

To
1. The Secretary,
Ministry of Urban Affairs and
Poverty Alleviation, 'C' Wing,
Nirman Bhavan,
New Delhi 110 011.

2. The Director General (Works),
Government of India,
Directorate General of Works,
Central Public Works Department,
Nirman Bhavan, 'A' Wing,
New Delhi 110 011.

3. The Chairman,
Union Public Service Commission,
Dholpur House, Shahjahan Road, New Delhi.

4. The Central Administrative Tribunal,
Madras Bench,
High Court Complex, Chennai 600 014.
Rep. by its Registrar.

□